



UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION

In re  
PHONG HUNG TRAN,  
Debtor.

Case No. 2:12-bk-16236 RK  
Chapter 7  
Adv. No. 2:12-ap-01341 RK

TRU LE,  
Plaintiff,  
vs.  
PHONG HUNG TRAN,  
Defendant.

MEMORANDUM DECISION ON  
ADVERSARY COMPLAINT TO  
DETERMINE DISCHARGEABILITY OF  
DEBT AND FOR DENIAL OF  
DISCHARGE

DATE: September 16 and 17, 2010  
TIME: 9:00 a.m.  
CTRM: 5D  
411 West 4<sup>th</sup> Street  
Santa Ana, CA 92701

This adversary proceeding was tried before the undersigned United States Bankruptcy Judge on September 16 and 17, 2010, on the complaint of plaintiff Tru Le ("Le") to determine dischargeability of debt against defendant Phong Hung Tran ("Tran") pursuant to Sections 523(a)(2)(A), 523(a)(4) and 523(a)(6) of the Bankruptcy Code, 11 U.S.C., and for denial of discharge pursuant to Section 727(a)(2) and 727(a) of the Bankruptcy Code. Barbara B. Nguyen, American Business Lawyers, APLC, appeared for Le. Jai H. Kim, Pak Law Corporation, appeared for Tran.

1 On October 17, 2008, Tran filed a voluntary petition for relief under Chapter 7 of  
2 the Bankruptcy Code, 11 U.S.C. On January 12, 2009, Le commenced this adversary  
3 proceeding by filing his complaint against defendants Tran, Denise Nguyen, Coastline  
4 Pain Center, Foundation Marketing Corp., Phong Tran Corp., Coastline Medical Clinic,  
5 Inc., and Mile Square Surgery Center, Inc., seeking a declaration that the debt based on  
6 loans he made to defendant Tran be deemed non-dischargeable pursuant to 11 U.S.C. §  
7 523(a)(2)(A), 523(a)(4) and 523(a)(6), that the discharge be denied to defendant Tran  
8 pursuant to 11 U.S.C. §§ 727(a)(2), (3), (4) and (5) and that transfers of assets by  
9 defendant Tran to other defendants be set aside as fraudulent transfers and recovered by  
10 the estate pursuant to 11 U.S.C. § 541. *Complaint to Determine Dischargeability of Debt*  
11 (*"Complaint"*), filed on January 12, 2009. On February 11, 2009, defendant Tran served  
12 and filed an answer denying the substantive allegations of the complaint. *Answer to*  
13 *Complaint*, filed on February 11, 2009. On August 24, 2009, the Clerk of Court entered  
14 defaults against defendants Denise Nguyen, Coastline Pain Center, Foundation  
15 Marketing Corp., Phong Tran Corp., and Coastline Medical Clinic, Inc.

16 On May 11, 2010, the court conducted a pretrial conference in this adversary  
17 proceeding. On June 10, 2010, the court entered the joint pretrial order. By order filed  
18 on June 21, 2010, defendant Mile Square Surgery Center, Inc., was voluntarily dismissed  
19 from the adversary proceeding at the request of plaintiff. On September 15, 2010, the  
20 parties filed a stipulation regarding authenticity of documents and admission of evidence  
21 at trial that all exhibits with the exception of Exhibit 20 may be admitted without objection.

22 On September 16 and 17, 2010, the court conducted the trial in this adversary  
23 proceeding. At the close of the evidence at trial, the court ordered the parties to submit  
24 proposed findings of fact and conclusions of law on or before October 29, 2010 and to file  
25 objections, if any, on or before November 12, 2010. Tran lodged his proposed findings of  
26 fact and conclusions of law on November 1, 2010. Le lodged his proposed findings of  
27 fact and conclusions of law on October 29, 2010. Le filed objections to Tran's proposed  
28 findings of fact and conclusions of law on November 9, 2010. Tran filed objections to

1 Le's proposed findings of fact and conclusions of law on November 12, 2010. The court  
2 set a further hearing after the deadline for filing objections to proposed findings of fact  
3 and conclusions of law for December 14, 2010. On December 14, 2010, the court took  
4 the matter under submission.

5 Having considered the evidence admitted at trial and the oral and written  
6 arguments of the parties, the court now issues this memorandum decision.

7 The court has jurisdiction over this adversary proceeding under 28 U.S.C. §§  
8 157(a) and (b)(1) and (2)(I) and 1334. Venue is proper in this judicial district. This  
9 adversary proceeding is a core matter.

10 The court makes the following findings of facts based on facts previously  
11 determined in the court's joint pretrial order as well as facts determined on the evidence  
12 admitted at trial. *Joint Pre-Trial Conference Order ("JPTO")*, entered on June 10, 2010.

### 13 FACTS

14 Tran is a medical doctor licensed in California as a physician and surgeon. *JPTO*  
15 ¶ 5. On or about November 2004, Tran was the owner of a residence at 10111 North  
16 Hampton Avenue, Westminster, California (the "North Hampton Residence"). *Transcript*  
17 *of September 16, 2010 Trial Testimony of Phong Tran* at 166. Defendant Denise  
18 Nguyen, is Tran's long-time girlfriend and the mother of his four children. *JPTO* ¶ 6.  
19 Defendant Coastline Pain Center is a medical corporation with offices in Orange and Los  
20 Angeles Counties, California. Coastline Pain Center is property of the bankruptcy estate  
21 because Tran owned the sole interest in Coastline Pain Center on the Petition Date.  
22 *JPTO* ¶ 7.

23 In 2006, 2007, 2008 and 2009, Tran worked full-time exclusively for Coastline Pain  
24 Center. *JPTO* ¶ 8. Tran is the President, Vice President, Secretary, Treasurer, book-  
25 keeper, custodian of records, and sole shareholder of Coastline Pain Center. *JPTO* ¶ 9.

26 Defendant Foundation Marketing Corporation is a corporation, presently  
27 suspended by the California Secretary of State, with offices in Orange County, California.  
28 Defendant Denise Nguyen is the President, Vice President, Secretary, Treasurer,

1 bookkeeper, custodian of records and sole shareholder of Foundation Marketing  
2 Corporation. *JPTO* ¶ 10.

3 Before the date of the transaction between Le and Tran on November 22, 2004,  
4 which is the primary subject of the dispute between these parties, Tran met Le when Le  
5 brought in his mother to Tran to be treated as a patient at Coastline Pain Center.

6 *Transcript of September 16, 2010 Trial Testimony of Phong Tran* at 163 and 173.

7 According to Tran, Le wanted Tran to be a go-between to help him do business in the  
8 United States. *Id.* at 163. Tran testified that Le represented to him that Le was a well-  
9 respected businessman in Vietnam and that Le had many business connections in

10 Vietnam, but that America was very new to him and that he did not understand the

11 language or American culture very well. *Id.* Le is the owner and operator of a

12 telecommunications company named EZ-Link Telecommunications (“EZ-Link”). *Id.* at

13 175. Tran testified at trial that he and Le met on several occasions in which they

14 discussed potential business opportunities between Vietnam and the United States, and

15 Le informed Tran of his involvement with EZ-Link. *Id.* at 172, 177-178. According to

16 Tran, he agreed to work with Le, as a consultant, to help him create a business

17 relationship between the telecommunications companies in Vietnam and the United

18 States via EZ-Link. *Id.*

19 Later, while Le was out of the country, Tran treated Le’s father who had

20 gastrointestinal bleeding and Tran treated him and stopped the bleeding. *Id.* at 167.

21 According to Tran, Le thanked Tran for saving his father’s life and “wanted to pay me in  
22 any way, any form or shape.” *Id.* at 168. At that time, Tran related his need for a loan to

23 Le, and Le agreed to make the loan of \$400,000. *Id.* at 168. Although not requested by

24 Le, Tran prepared a promissory note (the “Note”) to memorialize the loan transaction. *Id.*

25 at 168-170; *Trial Exhibit 8*. The Note provided that Tran was to repay the \$400,000.00

26 loan within a period of one to two years from the loan date. *Id.* The note did not specify

27 any interest payments. *Id.* In his testimony at trial, Tran acknowledged that Le made him

28

1 a loan, and he agreed to pay Le back. *Id.* at 114-116. Tran acknowledged in his trial  
2 testimony that he gave Le a promissory note. *Id.* at 117-118.

3 According to Tran, he just gave Le the note, Le gave him the check, and that was  
4 it: there were no other conditions. *Id.* at 164-165. Tran testified about what Le said to  
5 him on the loan: "There was no condition at all, sir. He basically said that you saved my  
6 father's life, and this is what little I can do for you and I'd be very happy." *Id.* at 169.  
7 According to Tran, Le never asked him for a trust deed. *Id.* Tran denied in his trial  
8 testimony that the note he gave to Le was a secured note despite the language to the  
9 contrary. *Id.* at 170.

10 The note contained language for a security interest. Specifically, the note stated:  
11 "This Note is secured by separate properties: house and business including fixtures,  
12 equipment, stock in trade and goodwill, now owned or herein after acquired." *Trial*  
13 *Exhibit 8*. According to Tran, although he put the language in the note stating that his  
14 house and business were security for the loan, but he was not an attorney, apparently  
15 meaning that it was a mistake. *Id.* at 165-166.

16 In his testimony at trial, Le testified that on November 22, 2004, Tran came over to  
17 Le's house to pick up the loan check and brought with him a promissory note in the  
18 amount of \$400,000 for the loan Tran wanted from Le. *Transcript of September 16, 2010*  
19 *Trial Testimony of Tru Le* at 145. The note prepared by Tran stated that the loan would  
20 be secured by "separate properties," including Tran's house and business, including  
21 fixtures, equipment, stock in trade and goodwill. *Trial Exhibit 8*. Tran gave Le the note,  
22 and Le gave Tran a check in the amount of \$400,000 for the loan. *Transcript of*  
23 *September 16, 2010 Trial Testimony of Tru Le* at 145. According to Le, the conditions for  
24 the loan was that Tran was to give a lien on his house, his business, his retirement funds  
25 and other assets. *Id.* at 151. Le said that Tran agreed to all of these conditions. *Id.* at  
26 155. When Tran met Le on this date, Tran had also brought with him a copy of the grant  
27 deed for the North Hampton Residence as evidence of his ownership of the North  
28 Hampton Residence. *Id.* at 152, 155. Tran, however, did not bring the lien documents

1 requested by Le to perfect Le's security interest in the property, and they agreed to meet  
2 two days later at Tran's attorney's office for Tran to hand over these documents to Le. *Id.*  
3 at 152-154. According to Le, he and Tran also agreed that Tran would not cash the loan  
4 check until November 24, 2004 when Tran was supposed to turn over the lien documents  
5 to Le. *Id.* at 152, 157. Le and Tran made an appointment on November 24, 2004 to  
6 meet at Le's attorney's office at 1:30 p.m. *Id.* at 157. Tran said that he wanted the check  
7 then to show his workers because he was afraid he would lose face if he did not have the  
8 money. *Id.* at 156. Le said that he trusted Tran because he was a successful doctor. *Id.*  
9 Tran did not appear for the appointment on November 24, 2004. *Id.* at 157. Le called  
10 him many times that day, and Tran told him that he was very busy with patients, but  
11 would be at Le's place in one or two days. *Id.* Le and Tran made another appointment  
12 for November 26, but Tran did not appear for that appointment either. *Id.* at 159. Le tried  
13 calling Tran numerous times after he did not show for the November 26 appointment, but  
14 Tran did never answered his phone. *Id.* at 160. Later that evening, Tran returned the call  
15 and said that he was very busy with patients and asked for a few more weeks before  
16 meeting, and Le agreed. *Id.* Several weeks later, Tran told Le that he was still very busy  
17 and could not meet and provide the documents. *Id.* Le attempted to arrange a meeting  
18 with Tran several times over the following weeks, but Tran always had an excuse for  
19 being unable to meet. *Id.*

20 Tran testified at trial that Le agreed to convert the loan to a payment for services to  
21 be performed by Tran for Le and an investment in Tran's business. *Transcript of*  
22 *September 16, 2010 Trial Testimony of Phong Tran* at 118. Tran acknowledges that a  
23 state court jury from the trial discussed below did not find for him on that issue. *Id.* Le  
24 testified that he did not agree to convert his loan into an investment into Tran's business.  
25 *Transcript of September 16, 2010 Trial Testimony of Tru Le* at 128.

26 On November 21, 2005, Le filed suit against Tran for breach of contract in the  
27 Superior Court of California for the County of Orange in the case was entitled *Tru Le v.*  
28 *Phong Hung Tran*, Case No. 05CC12398. In this case, Le sought a judgment against

1 Tran for the unpaid principal of the loan between the two parties, plus interest. Tran  
2 brought a cross-complaint against Le. In April 2007, the matter was tried before a jury  
3 during a two week trial. *JPTO* ¶ 11.

4 On April 19, 2007, following the presentation of evidence, the jury returned a  
5 verdict in favor of Le on the breach of contract claim, awarding him \$457,960.00, which  
6 was comprised of the unpaid principal on the loan, plus interest (the “Judgment”). Costs  
7 of suit were later added to the amount of the Judgment. The Superior Court entered the  
8 Judgment, and it has not been modified or vacated. Le is still the owner of the Judgment,  
9 of which only \$8,271.79 has been paid. *JPTO* ¶ 12.

10 On September 21, 2007, the Superior Court filed an Abstract of Judgment for Le’s  
11 Judgment against Tran (the “Abstract”). On October 4, 2007, the Abstract was recorded  
12 with the Orange County Recorder’s Office. *JPTO* ¶ 13. By virtue of the Judgment and  
13 the Abstract, Le acquired a pre-petition judgment lien on all of the rights and interests of  
14 Tran. *JPTO* ¶ 14. On October 29, 2007, Le filed a Notice of Judgment Lien with the  
15 California Secretary of State pursuant to California Code of Civil Procedure, § 697.510 et  
16 seq. *JPTO* ¶ 15. As a result, Le had a pre-petition lien on the following personal  
17 property of Tran’s accounts receivable, chattel paper, equipment, inventory and  
18 negotiable documents of title. *JPTO* ¶ 16.

19 Sometime in 2007, Greenpoint Mortgage foreclosed on Tran’s North Hampton  
20 Residence. *September 16, 2010 Trial Testimony of Phong Tran* at 166.

21 On January 28, 2008, Le, through the Orange County Sheriff, executed a  
22 garnishment of Tran’s wages as an employee of the Coastline Pain Center. On two  
23 occasions (February 12, 2008 and about May 5, 2008), Tran filed an employer’s tax  
24 return stating under penalty of perjury on behalf of Coastline Pain Center that no wages  
25 were paid to Tran. The wage garnishment was effective up to the petition date in this  
26 case, but no money was ever sent from Coastline Pain Center in response to the wage  
27 garnishment to the Orange County Sheriff. *JPTO* ¶ 17.

On May 9, 2008, Le, through the Orange County Sheriff, levied on Tran's interest in stock of Coastline Pain Center. As a result, Le received a lien by levy. Pursuant to Code of Civil Procedure, § 697.710, a levy on property under writ of execution creates an execution lien on the judgment debtor's interest in the property. *JPTO* ¶ 18.

### ANALYSIS

*I. Le Has Proven That He Sustained Losses as a Proximate Result of the Representations Made by Tran that Tran Would Repay the Loan*

11 U.S.C. § 523(a)(2)(A)

11 U.S.C. 523(a) provides that "[a] discharge under section 727, 1141, 1228(a), 1228 (b) or 1328(b) of this title does not discharge an individual debtor from any debt— . . . (2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained, by--(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition." See also *Citibank (South Dakota), N.A. v. Eashai (In re Eashai)*, 87 F.3d 1082, 1086 (9<sup>th</sup> Cir. 1996). To render a debt nondischargeable under § 523(a)(2)(A), the following must be shown by a preponderance of the evidence: (1) that the debtor made the representations at issue; (2) that at the time the debtor knew they were false; (3) that the debtor made those representations with the intention and purpose of deceiving the creditor; (4) that the creditor justifiably relied on such representations; and (5) that the creditor sustained the alleged losses as the proximate result of the representations having been made. *In re Eashai*, 87 F.3d at 1086; *Britton v. Price (In re Britton)*, 950 F.2d 602, 604 (9<sup>th</sup> Cir. 1991); see also, 4 March, Ahart and Shapiro, *California Practice Guide: Bankruptcy*, ¶ 22:452 at 22-56 (2011). Plaintiff must prove each of these elements of a claim under § 523(a)(2) by a preponderance of the evidence. *In re Eashai*, 87 F.3d at 1086; see also, *Grogan v. Garner*, 498 U.S. 279, 291 (1991).

Loan Transaction

§ 523(a)(2)(A) – First Element: Tran Made Representations to Le: Under § 523(a)(2)(A), Le must prove that Tran made the representations at issue. *In re Eashai*,



1 87 F.3d at 1086. The evidence in this case shows that Tran promised Le that he would  
2 repay the loan of \$400,000 that Le made to him and that Tran also promised Le to give  
3 Le a security interest in his residence and business to secure repayment of the loan.  
4 These representations are not only shown in the testimony of Tran and Le, but also, in  
5 the promissory note that memorialized Tran's promise to repay the loan. *JPTO* at 3;  
6 *September 16, 2010 Trial Testimony of Tru Le* at 153-157; *September 16, 2010 Trial*  
7 *Testimony of Phong Tran* at 166-167; *Trial Exhibit 8*. The court specifically finds that Le's  
8 testimony that he was willing to make the loan on condition that Tran repay the loan and  
9 that Tran give Le a security interest in his residence and business to secure repayment of  
10 the loan is credible and that Tran's testimony that Le did not require him to put up  
11 security for the loan is not credible. The court also specifically finds that Tran's testimony  
12 that Le agreed to convert his loan into equity in Tran's business is not credible, and the  
13 court notes that this finding is supported by the state court jury's verdict finding that Tran  
14 breached the loan agreement as well as Le's testimony in this case that he did not agree  
15 to convert the loan into equity.

16 The court finds that Le has shown by a preponderance of the evidence that Tran  
17 did in fact make the representations that he would repay the loan to Le and that he would  
18 give Le a security interest in his residence and business, and as such, Le has satisfied  
19 the first element of § 523(a)(2)(A).

20 § 523(a)(2)(A) – Second Element: Tran Knew at the Time the Representations  
21 Were False: Second, under § 523(a)(2)(A), Le must prove that at the time Tran made the  
22 representations at issue, he knew they were false. *In re Eashai*, 87 F.3d at 1086. For a  
23 debt for money or property obtained through "false pretenses or representations" to be  
24 nondischargeable under § 523(a)(2)(A), plaintiff must show by a preponderance of the  
25 evidence that "the maker of the statement chose to assert a fact that he has neither  
26 knowledge nor belief in its truth "and recognizes that there is a chance, more or less  
27 great, that the fact may not be as it is represented." *Advanta Nat'l Bank v. Kong (In re*  
28 *Kong)*, 239 B.R. 815, 826-827 (9<sup>th</sup> Cir. BAP 1999), *citing*, *Restatement (Second) of Torts*,

1 § 526, *comment e*. “This is often expressed by saying that fraud is proved if it is shown  
2 that a false representation has been made without belief in its truth or recklessly, careless  
3 of whether it is true or false.” *Id.* at 827. As such, a debt that is obtained by a debtor who  
4 does not have an honest belief as to his intent to repay it is exempt from discharge under  
5 11 U.S.C. § 523(a)(2)(A). *Id.* at 828.

6 In this case, it appears that Tran took advantage of Le’s gratitude for Tran’s care  
7 of his father in asking for and obtaining the \$400,000 loan from Le. Taking advantage of  
8 a creditor is not *per se* fraudulent, though it may be one of the circumstances in the  
9 determination of whether a debt was incurred by false or fraudulent representations. The  
10 court recognizes that “a debtor’s insolvency or inability to pay does not by itself provide a  
11 sufficient basis for inferring the debtor’s intent.” 4 Resnick and Sommer, *Collier on*  
12 *Bankruptcy*, ¶ 523.08[1][d] at 523-46 (16th ed. 2010), *citing*, *Chase Manhattan Bank v.*  
13 *Carpenter (In re Carpenter)*, 53 B.R. 724 (N.D. Ga. 1985) and *Montgomery Ward and*  
14 *Co., Inc. v. Blackburn (In re Blackburn)*, 68 B.R. 870 (Bankr. N.D. Ind. 1987). The court  
15 also recognizes that “[a] debtor’s honest belief that a debt would be repaid in the future,  
16 even if in hindsight found to have been very unrealistic, negates any fraudulent intent.”  
17 *Id.*, *citing Georgia Bank & Trust Co. v. McKinney*, 18 B.R. 607 (Bankr. M.D. Ga. 1982).  
18 As previously stated, “fraud is proved if it is shown that a false representation has been  
19 made without belief in its truth or recklessly, careless of whether it is true or false.” *In re*  
20 *Kong*, 239 B.R. at 827, *citing, Restatement (Second) of Torts*, § 526 *comment e*.

21 The evidence in this case shows that Tran never intended to repay the loan to Le  
22 and never intended to give Le the security interest he asked for in making the loan.  
23 Tran’s course of conduct demonstrates this fact. Tran was having financial problems and  
24 needed a loan. In asking Le for a large loan (\$400,000), Tran took advantage of Le’s  
25 gratitude for having saved Le’s father’s life through medical treatment. Tran called Le to  
26 pick up the loan check from Le, and they agreed to meet at Le’s house on November 22,  
27 2004. On that day, Tran brought over to Le the promissory note for the loan he prepared  
28 which set out the terms of the loan, including the giving of a security interest in his

1 residence and business to secure the loan made to him by Le. Tran also brought over a  
2 copy of the grant deed to his residence to show Le that he owned the property. However,  
3 Tran did not bring over a trust deed giving a security interest in the residence to the  
4 meeting. When Tran and Le met, Le agreed to give Tran the check because Tran  
5 needed proof of the loan so he would not lose face with his employees and Tran  
6 promised Le that they meet in a couple of days at Le's attorney's office on November 24,  
7 2004 and Tran would give Le the trust deed as promised. On November 24, 2004, Le  
8 went to his lawyer's office to meet Tran, but Tran never appeared. Le tried calling Tran  
9 numerous times, but Tran did not answer. Tran later returned Le's calls and told Le that  
10 he was very busy with patients and needed a day or two to bring over the trust deed. Le  
11 agreed, but when Le and Tran were supposed to meet again in a day or so on November  
12 26, 2004, Tran failed to appear again. Again, Le tried calling Tran numerous times, but  
13 Tran did not answer. Later that evening, Tran returned the call, saying again that he was  
14 very busy with patients and asked Le for a few more weeks before getting him the  
15 documents, and Le agreed. Several weeks later, Tran told Le that he was still very busy  
16 and could not meet and provide the documents. Le attempted to arrange a meeting with  
17 Tran several times in the next few weeks, but Tran continued to make excuses for being  
18 unable to meet.

19 Tran's pattern of behavior with respect to the loan he took from Le indicates that  
20 he had no intent to repay the loan or to give a security interest in his house and business  
21 as he promised when he asked for and received the \$400,000 loan from Le. Tran told Le  
22 that he needed the loan proceeds urgently and promised to meet with Le shortly  
23 thereafter to execute the trust deed. Tran was given numerous opportunities to meet with  
24 Le and his attorney, yet Tran consistently evaded such meetings. In addition, Tran failed  
25 to return Le's calls, reschedule the meetings he missed, or otherwise ensure that Le  
26 obtained the documents necessary for him to perfect the security interest on the loan.  
27 Tran never did provide the trust deed he promised. Tran argues that the loan had no  
28 conditions, such as the giving of security, but this argument is undercut by Tran's

1 preparation of the promissory note that provides for a security interest for Le in Tran's  
2 property and Tran's showing the grant deed to Le demonstrating his title in the property  
3 could only have been for the purpose of demonstrating to Le that he could give him a  
4 security interest. If there were no conditions for the loan, then there would have been no  
5 need for Tran to have stated such conditions in the promissory note, no need for Tran to  
6 have shown Le the grant deed to the house and no need for further meetings between Le  
7 and Tran. Thus, the court finds that Le's testimony to be credible and Tran's testimony  
8 not to be credible. The court concludes that the sum of Tran's actions indicates that he  
9 never intended to repay Le the loan or give Le a security interest when he made  
10 representations to Le that he would repay the loan or give him a security interest.

11 Accordingly, the court finds that Le has met his burden of proof of showing by a  
12 preponderance of the evidence that Tran falsely represented to Le that he intended to  
13 repay the debts from the loan made by Le and to give Le a security interest in his  
14 residence and business and that Le has established the second element of a claim under  
15 § 523(a)(2)(A).

16 § 523(a)(2)(A) – Third Element: Tran Made the Representations with Intent to  
17 Deceive: Third, under § 523(a)(2)(A), Le must prove that Tran made the representations  
18 with the intention and purpose of deceiving him as the creditor. *In re Eashai*, 87 F.3d at  
19 1086. The third element of § 523(a)(2)(A)--the intent to deceive--is a question of fact.  
20 *Rubin v. West (In re Rubin)*, 875 F.2d 755, 758 (9<sup>th</sup> Cir. 1989). Since a debtor will rarely  
21 admit to his fraudulent intentions, the creditor must rely on circumstantial evidence to  
22 infer an intention to deceive. *In re Eashai*, 87 F.3d at 1090. The court may infer an intent  
23 to deceive from a false representation. *In re Rubin*, 875 F.2d at 759 (citation omitted).

24 Le contends that Tran intended to deceive him because he did not have the intent  
25 to repay the loan when he took out the loan. Tran had promised Le that he would give  
26 him a trust deed to secure the loan. Before giving Le the trust deed, Tran told Le that he  
27 needed the loan right away and would execute the trust deed shortly thereafter. After a  
28 short time, Le contacted Tran about executing the trust deed, and Tran was evasive.

1 Le contends that Tran's unwillingness to give him a trust deed to secure the loan  
2 evidences an intent to deceive as promised. According to Le, he requested that Tran  
3 sign a trust deed to him to show that they owed the money to him, and Tran promised  
4 that he would, but when Le asked him to execute the trust deed, Tran evaded Le's  
5 requests by making excuses. Le testified that Tran never provided the trust deed as  
6 promised. The court finds Le's testimony on this point credible and determines that Tran  
7 intended to obtain Le's money by deceiving him to lend him the money without giving a  
8 trust deed as Le requested.

9 Accordingly, the court finds that Le has shown by a preponderance of evidence  
10 that Tran intended to deceive him when Tran borrowed the \$400,000 pursuant to the oral  
11 loan agreement they made in 2005. Accordingly, the court finds that Le has satisfied the  
12 third element of a claim under § 523(a)(2)(A).

13 § 523(a)(2)(A) – Fourth Element: Le Justifiably Relied upon Tran's  
14 Representations: Fourth, under § 523(a)(2)(A), Le must prove that he justifiably relied on  
15 Tran's representations. *In re Eashai*, 87 F.3d at 1086. In regards to the fourth element of  
16 § 523(a)(2)(A), Le must show that his reliance on Tran's promise to repay was "justified."  
17 *Field v. Mans*, 516 U.S. 59, 73-76 (1995) (holding that reliance need not reach a level of  
18 "reasonableness" to establish nondischargeability under § 523(a)(2)(A) but must still be  
19 justifiable). Here, Tran prepared a promissory note to memorialize the transaction and  
20 promised that he would give Le a trust deed in the North Hampton Residence and  
21 presented Le with the grant deed as evidence of his ownership of the North Hampton  
22 Residence. Furthermore, Tran promised Le that he would meet Le at Le's attorney's  
23 office to sign the trust deed and perfect Le's security interest for the loan. Le justifiably  
24 relied upon Tran's promises in lending him the money because Le was aware that Tran  
25 was a medical doctor with a busy practice, that Tran was a competent medical doctor who  
26 treated Le's parents and in fact, saved the life of Le's father, that Tran agreed to provide  
27 security for the loan in the written promissory note that he prepared for the loan and that  
28 Tran showed Le a copy of the grant deed establishing Tran had title to the property that

1 he had promised as collateral for the loan. Accordingly, the court finds that Le has shown  
2 by a preponderance of the evidence that he justifiably relied upon Tran's representations  
3 that he would give him a trust deed and repay the loan. Accordingly, the court finds that  
4 Le has satisfied the fourth element of § 523(a)(2)(A).

5 §523(a)(2)(A) – Fifth Element: Losses Proximately Resulted from the  
6 Representations Made by Tran to Le: Fifth, under § 523(a)(2)(A), Le must prove that he  
7 sustained the alleged losses as the proximate result of the Tran's representations. *In re*  
8 *Eashai*, 87 F.3d at 1086. In regards to the fifth element of § 523(a)(2)(A), Le has shown  
9 he has suffered damages based on Tran's failure to repay the loan of \$400,000 made by  
10 Le as Tran promised. Tran failed to repay the loan of \$400,000 to Le, and because Tran  
11 failed to follow through on his promise to give a trust deed to Le in his house as collateral,  
12 the loan was unsecured. Eventually, Tran lost the house in foreclosure, which meant that  
13 Le had no collateral for the loan of \$400,000 made to Tran as Tran had promised.

14 Based on this evidence, the court finds that Le has proven by a preponderance of  
15 the evidence that he sustained losses as a proximate result of the representations made  
16 by Tran that he would repay the loan and ultimately he did not.

17 For the foregoing reasons, the court finds that Le has proven by a preponderance  
18 of the evidence the five elements to establish a claim under § 523(a)(2)(A) that (1) the  
19 Tran made the representations to Le for the loans made to him; that (2) the  
20 representations were false; that (3) Tran made the representations with the intention and  
21 purpose of deceiving Le; that (4) Le justifiably relied on such representations; and (5) Le  
22 sustained the alleged losses as the proximate result of the representations having been  
23 made.

24 Accordingly, the court hereby holds in favor of Le and concludes that the loan debt  
25 owed by Tran to Le is excepted from discharge under 11 U.S.C. § 523(a)(2)(A). Le is  
26 entitled to recover on this claim.

27 ///

1 *II. Le Has Not Proven that Tran Provided Him with a Written Representation as to*  
2 *Tran's Financial Condition*

3 11 U.S.C. § 523(a)(2)(B)

4 In order to establish that a debt is excepted from discharge under § 523(a)(2)(B),  
5 plaintiff must show that (1) the creditor provided the debtor with money, property,  
6 services or credit based on a written representation of fact by the debtor as to the  
7 debtor's financial condition; (2) the representation was materially false; (3) the debtor  
8 made the representation with the intention and purpose of deceiving the creditor; (4) the  
9 creditor relied upon the representation; (5) the creditor relied on the representation and  
10 (6) damage proximately resulted from the debtor representation. 4 March, Ahart and  
11 Shapiro, *California Practice Guide: Bankruptcy*, ¶ 22-547 at 22-66 (2011), citing *In re*  
12 *Siriani*, 967 F.2d 302, 304 (9<sup>th</sup> Cir. 1992) and *In re Candeland*, 90 F.3d 1466, 1469 (9<sup>th</sup>  
13 Cir. 1996).

14 Le has not produced any evidence that Tran provided him with a written financial  
15 statement in order to induce Le to loan money to him. Rather, the facts show that Tran  
16 orally stated to Le his need for money, and Le verbally offered to provide Tran a  
17 \$400,000 loan. Le did not ask to see, and Tran did not provide, any written  
18 representation of his financial condition before or at the time of the transaction, which is  
19 an element of a claim under § 523(a)(2)(B). Therefore this court denies plaintiff's claim  
20 for relief pursuant to 11 U.S.C. § 523(a)(2)(B).

21 *III. Le Has Not Proven That Tran Should be Excepted from Discharge for Defalcation*  
22 *while Acting in A Fiduciary Capacity.*

23 11 U.S.C. § 523(a)(4)

24 The court concludes that the debt owed by Le to Tran is not excepted from  
25 discharge for defalcation while acting in a fiduciary capacity pursuant to 11 U.S.C. §  
26 523(a)(4). To prevail on a cause of action for nondischargeability based on fraud or  
27 defalcation in a fiduciary relationship under § 523(a)(4), a creditor must prove (1) the  
28 debtor was acting in a fiduciary capacity; and (2) while acting in that fiduciary capacity,

1 the debtor engaged in fraud or defalcation. *Lovell v. Stanifer (In re Stanifer)*, 236 B.R.  
2 709, 713 (9th Cir. BAP 1999). The court looks to federal law to determine whether or not  
3 a relationship is fiduciary in nature under § 523(a)(4). *Ragsdale v. Haller*, 780 F.2d 794,  
4 795-796 (9th Cir. 1986). Moreover, “[t]he trust giving rise to the fiduciary relationship  
5 must be imposed prior to any wrongdoing; the debtor must have been a ‘trustee’ before  
6 the wrong and without reference to it.” *Id.*, citing *Davis v. Aetna Acceptance Co.*, 293  
7 U.S. 328, 333 (1934).

8 In this case, the relationship between Le and Tran was lender and borrower, and  
9 as such, Tran was not a fiduciary of Le. Because there was no fiduciary relationship  
10 between Le and Tran, there cannot be any claim for fraud or defalcation in a fiduciary  
11 relationship. Accordingly, the court finds for Tran on Le’s cause of action for  
12 nondischargeability based upon alleged fraud or defalcation while acting while acting in a  
13 fiduciary capacity pursuant to 11 U.S.C. § 523(a)(4), and the claim under this statute  
14 should be denied.

15 Le contends that the debt is also non-dischargeable under 11 U.S.C. § 523(a)(4)  
16 on grounds that Tran embezzled funds from Tran’s other businesses. The court rejects  
17 this claim on grounds that Le does not have standing to assert the rights of other parties,  
18 including Tran’s other businesses, which allegedly suffered a loss due to embezzlement.  
19 In any event, the court finds that Le has not met the burden of proving the three elements  
20 of an embezzlement claim under 11 U.S.C. 523(a)(4): (1) property rightfully in the  
21 possession of a nonowner; (2) appropriation of property to a use other than the use for  
22 which the property was entrusted to them; and (3) circumstances indicating fraud. *First*  
23 *Delaware Life Insurance Co. v. Wada (In re Wada)*, 210 B.R. 572, 575-576 (9<sup>th</sup> Cir. BAP  
24 1997). Because Le does not have standing to assert the rights of Tran’s other  
25 businesses, the court finds that Le does not have a claim for embezzlement against Tran  
26 pursuant to § 523(a)(4).



1 IV. Le Has Not Proven that Le's Debt Arose From A Willful and Malicious Injury By  
2 Tran to Determine that the Debt Owed by Tran is Non-Dischargeable Pursuant to 11  
3 U.S.C. § 523(a)(6).

4 Le alleges that the debt owed to him by Tran is excepted from discharge under 11  
5 U.S.C. § 523(a)(6) on grounds that the debt arose from a willful and malicious injury by  
6 defendant to plaintiff. *In re Su*, 290 F.3d 1140 (9<sup>th</sup> Cir. 2002). "The willful injury  
7 requirement of § 523(a)(6) is met when it is shown either that defendant had a  
8 substantive motive to inflict the injury or that defendant believed that injury was  
9 substantially certain to occur as a result of his conduct." *Petralia v. Jercich (In re*  
10 *Jercich)*, 238 F.3d 1202, 1208 (9<sup>th</sup> Cir. 2001). "Willful" means a deliberate or intentional  
11 act that necessarily leads to injury. Willful requires not only an intentional act that causes  
12 injury, but an intentional act done with the purpose of causing injury or while the actor  
13 was substantially certain that injury would result. *Kawaauhua v. Geiger*, 523 U.S. 57, 61-  
14 62 (1998). An injury is "malicious" when it is caused by a wrongful act, done intentionally,  
15 which necessarily causes injury, and which is done without just cause or excuse. *In re*  
16 *Jercich*, 238 F.3d at 1208.

17 While Le has proven a claim under § 523(a)(2)(A) that he suffered a loss based on  
18 Tran's misrepresentations, the court does not find that Le has proven a claim under §  
19 523(a)(6). Although the fact that Tran took the loan money without executing a trust deed  
20 to secure the loan may have been willful, this conduct is not necessarily what caused  
21 injury to Le. Le could have sued Tran for breach of contract for failure to execute the  
22 trust deed, obtained a judgment against Tran, and sought to have the judgment attached  
23 to the collateral. However, Le did not attempt to attach the judgment before Tran lost the  
24 collateral (the North Hampton Residence) through foreclosure.

25 Accordingly, the court finds that Le has not shown by a preponderance of the  
26 evidence that his debt arose from a willful and malicious injury by Tran and denies the  
27 claim under 11 U.S.C. § 523(a)(6).

1 *V. Le Lacks Standing to Seek Declaratory Relief under 11 U.S.C. § 541 that the*  
2 *Property of Others Belongs to the Bankruptcy Estate*

3 Le seeks relief declaring that certain property in the name of defendants other than  
4 Tran should be determined to be property of the bankruptcy estate in this case. Because  
5 the Chapter 7 bankruptcy trustee is the only party who has the authority to administer  
6 assets of the bankruptcy estate under 11 U.S.C. § 704(a)(1), Le as a creditor lacks  
7 standing to seek declaratory relief that property of others belongs to the bankruptcy  
8 estate. Accordingly, Le's claim under 11 U.S.C. § 541 is dismissed for lack of standing.

9 *VI. Le Has Not Proven that Tran Transferred His Assets Within One Year of the*  
10 *Petition Date to Deny Tran's Discharge Pursuant to 11 U.S.C. § 727(a)(2).*

11 A debtor may be denied a discharge under 11 U.S.C. § 727(a)(2) if it is established  
12 that the debtor acting with the intent to hinder, delay or defraud a creditor. . . transferred,  
13 removed, destroyed, mutilated, or concealed assets of the bankruptcy estate. Le as the  
14 party objecting to discharge of the debtor bears the burden of proving by a  
15 preponderance of the evidence that the debtor (1) made a disposition of property, such  
16 as transfer or concealment, and with (2) subjective intent to hinder, delay, or defraud a  
17 creditor through the act of disposing of the property. *In re Lawson*, 193 B.R. 520, 523 (9<sup>th</sup>  
18 Cir. BAP 1996). However, a denial of a discharge under § 727(a)(2) must be based on a  
19 transfer within one year of the filing of the bankruptcy petition.

20 In the complaint, Le alleges that Tran should be denied a discharge from his debts  
21 "[b]ased upon debtor's intentional acts of transferring, delivering and/or otherwise  
22 concealing the jewelry and other assets of the debtor." Le argues that transfers  
23 demonstrating that Tran hid his assets from his creditors are shown by Tran's signing  
24 checks for Coastline Pain Center to withdraw cash totaling almost \$500,000 in 2007 and  
25 to pay a similar amount of funds to pay Foundation Marketing, an entity controlled by  
26 Tran's girlfriend, Denise Nguyen, the mother of his four children. *Le's Proposed Findings*  
27 *of Fact and Conclusions of Law*, lodged (received) on October 29, 2010, at 28. However,  
28 Le argues that this disbursement of funds by Coastline Pain Center is attributable to him

1 because Coastline is his alter ego. *Id.* at 23. Tran testified that Coastline used the  
2 withdrawn cash to buy cashier's checks to pay rent to its landlord and to pay Foundation  
3 for its payroll as a labor contracting firm who employed Coastline's workers and for  
4 advertising expenses. *September 16, 2010 Trial Testimony of Phong Tran* at 36-70, 112.  
5 According to Tran, rent was \$21,000 per month, and payroll for Coastline was \$40,000 to  
6 \$60,000 per month, including four to five doctors. *Id.* at 90, 98. According to Tran, total  
7 operating expenses, including rent and payroll, was about \$800,000 to \$1,000,000 per  
8 year in 2008. *Id.* at 91

9       However, based on this record, the court finds that Le has failed to prove by a  
10 preponderance of the evidence that Tran made transfers of his assets within the one year  
11 limitation period ending with the filing of the bankruptcy petition by Tran on October 17,  
12 2008. As argued by Le, the "requirements for application of [the] alter ego doctrine are:  
13 (1) that there be such unity of interest that separate personalities of corporation and  
14 individual no longer exist; and (2) that inequitable result will follow if acts are treated as of  
15 corporation alone." *Le's Proposed Findings of Fact and Conclusions of Law*, lodged on  
16 October 29, 2010, at 22, *citing inter alia*, *Minifie v. Rowley*, 187 Cal. 481 (1921) and  
17 *Arnold v. Browne*, 27 Cal.App.3d 386, 394 (1972). Le cites the enumerated factors in  
18 *Associated Vendors, Inc. v. Oakland Meat Co.*, 210 Cal.App.2d 825, 838-840 (1962) that  
19 the court might rely upon to determine that Coastline was Tran's alter ego. After  
20 considering the evidence at trial, the court finds that the evidence of the *Associated*  
21 *Vendors* factors or other indications of alter ego liability are lacking or inconclusive to  
22 establish that Coastline was Tran's alter ego. For example, the first two *Associated*  
23 *Vendors* factors are: (1) commingling of funds and other assets, failure to segregate  
24 funds of the separate entities, and the unauthorized diversion of corporate funds or  
25 assets to other than corporate uses; and (2) the treatment by an individual of the assets  
26 of the corporation as his own. *Id.* The evidence is conflicting and inconclusive regarding  
27 the use of Coastline funds withdrawn by Tran with Tran testifying that the funds were  
28

1 used for corporate purposes, including rent, payroll and advertising and with Le  
2 suggesting but not showing otherwise.

3 Because Le has not offered sufficient evidence of a transfer of assets by  
4 defendant within one year of the petition date, Le has failed to meet his burden of proof  
5 under § 727(a)(2), and he is not entitled to judgment on this claim. The court is cognizant  
6 that failure of Le to prove a § 727 claim after proving a § 523 claim actually may be to his  
7 benefit because it means that his claim is not discharged under § 523 while the claims of  
8 other creditors are discharged under § 727. *See In re DeArmond*, 240 B.R. 51, 56-57  
9 (Bankr. C.D. Cal. 1999); 4 March, Ahart and Shapiro, *California Practice Guide:*  
10 *Bankruptcy*, ¶ 22-1531 *et seq.* at 22-166 – 22-169. However, viewing the evidence in this  
11 case objectively as discussed herein, the court finds and concludes that Le has proven a  
12 claim under § 523(a)(2)(A), but not under other provisions of the Bankruptcy Code,  
13 including § 727.

14 VII. Le Has Not Proven that Tran Concealed, Destroyed, Falsified, Or Failed to Keep  
15 Information Relevant to Coastline's Financial Condition to Deny Tran's Discharge  
16 Pursuant to 11 U.S.C. § 727(a)(3).

17 A debtor may be denied a discharge under 11 U.S.C. §727(a)(3) if it is established  
18 that the debtor has concealed, destroyed, mutilated, falsified or failed to keep books and  
19 records relevant to the debtor's financial condition or business transactions . . . unless the  
20 act or failure was justified under all of the circumstances of the case. *In re Cox*, 904 F.2d  
21 1399, 1401 (9<sup>th</sup> Cir. 1990).

22 In the complaint, Le alleges that Tran should be denied a discharge from his debts  
23 because Tran “concealed, destroyed, mutilated, falsified, or failed to keep or preserve  
24 recorded information, including books, documents, records and papers, from which  
25 [Tran's] financial condition or business transactions might be ascertained, which acts are,  
26 and were, unjustified.” *Complaint* at 19-20, ¶ 50. Although Tran is the sole shareholder,  
27 director, chief executive officer, financial officer and secretary, and responsible for the  
28 activities of Coastline in these capacities, Tran testified that in his capacity as an officer,

1 he made the business decision to engage an accounting firm to handle Coastline's  
2 financial matters on a quarterly basis. *September 16, 2010 Trial Testimony of Phong*  
3 *Tran* at 104-105. Tran provided Le financial documents with respect to Coastline. Such  
4 documents included tax returns and accounts receivable summaries for 2006, 2007, and  
5 2008. *Trial Exhibits 18 and 19; September 16, 2010 Trial Testimony of Tru Le* at 125-  
6 126. Tran also provided Le financial statements and bank statements for 2007 and 2008.  
7 *September 16, 2010 Trial Testimony of Tru Le* at 143.

8 The court finds that Le has not met his burden of proof in showing by a  
9 preponderance of the evidence that Tran concealed, destroyed, mutilated, falsified, or  
10 failed to keep or preserve recorded information relevant to Coastline's financial condition  
11 because while Tran did not personally maintain the books, records, tax returns and  
12 financial statements of Coastline, Tran hired an accounting firm to handle Coastline's  
13 financial matters, and Tran provided copies of Coastline's financial documents to Le. The  
14 fact that Le may not have understood the financial documents that Tran provided him  
15 does not aid his claim that Tran concealed the financial information of Coastline.  
16 Accordingly, the court concludes that Le has failed to meet his burden of proof under §  
17 727(a)(3), and he is not entitled to judgment on this claim.

18 VIII. Le Has Not Proven that Tran Acted With Fraudulent Intent By Failing to  
19 Disclose Certain Assets on His Bankruptcy Schedules to Deny Tran's Discharge  
20 Pursuant to 11 U.S.C. § 727(a)(4).

21 Le's fourth claim for relief alleges that defendant made a false oath or account  
22 pursuant to 11 U.S.C. § 727(a)(4)(A) and is not entitled to a discharge. *Complaint* at 20.  
23 Specifically, Le alleges that the false oaths or accounts are shown by: (1) Tran stating  
24 that the address of 10111 Northampton Avenue, Westminister, California, was his  
25 primary residence at the time the petition was filed; (2) Tran failed to list a Downey  
26 Savings bank account on his schedules; and (3) Tran failing to list his new corporation,  
27 Coastline Medical Clinic, Inc., on his schedules; (4) Tran's bankruptcy schedules failed to  
28 fully disclose his interest in certain real property; (5) Tran failed to list the personal

1 property which was the collateral for plaintiff's security agreement; and (6) Tran failed to  
2 keep or preserve adequate books and records to ascertain his financial condition.

3 In order to deny a debtor a discharge for a false oath or account under 11 U.S.C. §  
4 727(a)(4)(A), the creditor must show that: (1) the debtor made a statement under oath;  
5 (2) the statement was false; (3) the debtor knew the statement was false; (4) the debtor  
6 made the statement with fraudulent intent; and (5) the statement was material. 11  
7 U.S.C. § 727(a)(4)(A); *In re Retz*, 606 F.3d 1189, 1197 (9<sup>th</sup> Cir. 2010); *In re Roberts*, 331  
8 B.R. 876, 882 (9<sup>th</sup> Cir. BAP 2005), *cited in*, 4 March, Ahart and Shapiro, *California*  
9 *Practice Guide: Bankruptcy*, ¶ 22:896 at 22-103.

10 As to alleged failures to disclose real property, the court finds that Tran did not fail  
11 to disclose his real property interests on his bankruptcy schedules to support a false oath  
12 claim. The court finds that Tran's trial testimony that he disclosed his residence and his  
13 rental property as his only two real property interests was truthful. Le contends that Tran  
14 failed to disclose a timeshare interest in real property bought in 1995 for \$9,500, but the  
15 court finds that Tran did not make any false oath regarding this asset because as the  
16 defendant credibly testified the timeshare was transferred to his former spouse under a  
17 divorce decree in 2001 and that he no longer held the timeshare interest. Thus, with  
18 respect to Tran's real property interest disclosures, the court determines that he made no  
19 false oaths because none of his disclosures were false, and even if there was an  
20 incorrect omission of the timeshare, there was no fraudulent intent to disclose because it  
21 had been transferred to his former spouse.

22 Based on the totality of the circumstances, the court finds that Tran did not act with  
23 fraudulent intent in failing to list the accountant on his schedules and that the inaccurate  
24 disclosure on his schedules about the existence of the accountant was not material to  
25 deny defendant a discharge based on a false oath under 11 U.S.C. § 727(a)(4)(A).

26 For the foregoing reasons, the court finds that Le has not proven by a  
27 preponderance of the evidence that Tran failed to disclose his property interest on his  
28 bankruptcy schedules to deny a discharge to Tran pursuant to 11 U.S.C. § 727(a)(4)(A).

1 IX. Le Has Not Proven that Tran Could Not Account for Assets that He Formally  
2 Owned, but that Were Unavailable for Distribution to Creditors to Deny Tran a Discharge  
3 Pursuant to 11 U.S.C. § 727(a)(5).

4 A debtor may be denied a discharge under 11 U.S.C. §727(a)(5) if it is established  
5 that the debtor at one time owned a substantial identifiable asset, not too remote in time  
6 to the date of the commencement of the case; that on the date of filing the voluntary  
7 petition the debtor no longer had the particular asset, and when called upon to explain its  
8 disposition, he was unable to furnish a satisfactory explanation. Mere allegation of  
9 property loss is not sufficient itself, but plaintiff must establish that the debtor had a  
10 cognizable interest in specifically identifiable property that debtor no longer possesses.  
11 *In re Mezvinsky*, 265 B.R. 681, 689 (Bankr. E.D. Pa. 2001).

12 Section 727(a)(5) does not specify a time frame which would be relevant to deal  
13 with this issue, but several courts held that the debtor must have had cognizable legal or  
14 equitable interest in the property involved not too far removed in time from the date of the  
15 commencement of the case. *In re Bernstein*, 78 B.R. 619, 622 (S.D. Fla.1987); *In re*  
16 *Straub*, 192 B.R. 522, 525 (Bankr. D. N.D.1996); *In re Piscioneri*, 108 B.R. 595, 604  
17 (Bankr.N.D. Ohio 1989).

18 Le alleges that Tran wrongfully transferred his assets without adequate  
19 consideration to Defendants Denise Nguyen, Coastline Pain Center, Foundation  
20 Marketing Corporation, Phong Hung Tran Medical Corp., Coastline Medical Clinic and  
21 Coastline Medical Center to avoid payment of his obligations. *Complaint* at 8-13.  
22 However, Le failed to produce any evidence that these transfers occurred without  
23 adequate consideration or with the intent of avoiding the payment of his obligations and  
24 has otherwise appeared to abandoned his claim under § 727(a)(5) because the claim is  
25 not addressed in his proposed findings of fact and conclusions of law. *Le's Proposed*  
26 *Findings of Fact and Conclusions of Law*, lodged on October 29, 2010, at 30-31.

27 Accordingly, the court finds that Le has not proven by a preponderance of the  
28 evidence that Tran could not account for assets that he formally owned but that were

1 unavailable for distribution to creditors and denies Le's claim for relief to deny a  
2 discharge pursuant to 11 U.S.C. § 727(a)(5).

3 This memorandum decision constitutes the court's findings of fact and conclusions  
4 of law. Counsel for plaintiff is ordered to submit a proposed judgment in accordance with  
5 this memorandum decision within 30 days of entry of this decision.

6 IT IS SO ORDERED.

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25 DATED: March 20, 2012

  
United States Bankruptcy Judge



## NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*) **MEMORANDUM DECISION ON ADVERSARY COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT AND FOR DENIAL OF DISCHARGE** was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

**I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of **March 20, 2012**, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below:

- Thomas H Casey (TR) msilva@tomcaseylaw.com, tcasey@ecf.epiqsystems.com
- Jai H Kim attorneyjai@gmail.com
- James J Pak info@jpplc.com
- United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov

**II. SERVED BY THE COURT VIA U.S. MAIL:** A copy of this notice and a true copy of this judgment or order was sent by U.S. Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

Phong Hung Tran  
27 Memento St.  
Irvine, CA 92603

Andrew D Weiss  
Law Offices of Andrew D Weiss  
26459 Rancho Parkway S  
Lake Forest, CA 92630

**III. TO BE SERVED BY THE LODGING PARTY:** Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s) and/or email address(es) indicated below: